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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,126	10/11/2001	Andrew Dwight Dingsor	RSW919980041US2	9263

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EXAMINER

CARDONE, JASON D

ART UNIT	PAPER NUMBER
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2145

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/976,126

Applicant(s)

DINGSOR ET AL.

Examiner

Jason D Cardone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16-20 and 38-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 18 and 39-41 is/are allowed.
- 6) ☒ Claim(s) 16,17,19,20 and 38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. This action is responsive to the amendments of the applicant (Paper No. 8) filed on 8/2/04. Claims 16-20 and 38-41 are presented for further examination.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 16, 17, 19 and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by Brendel et al. ("Brendel"), USPN 5,774,660.

4. Regarding claims 16 and 38, Brendel discloses a computer comprising:

a plurality of processes, wherein the plurality of processes service a destination address and have process addresses [Brendel, col. 13, lines 18-46];

a packet routing layer, wherein the packet routing layer routes packets to the plurality of processes using a destination addresses within the packets [ie. TCP layer, Brendel, col. 13, lines 18-46];

a dispatch layer between a TCP layer and an IP layer, wherein the dispatch layer has a plurality of modes of operation including: a first mode of operation in which the

dispatch layer receives a packet from a client, wherein the packet includes the destination address [Brendel, col. 14, line 56 – col. 15, line 56];

a second mode of operation, responsive to receiving the packet, in which the dispatch layer identifies a process within the plurality of processes to service the client, wherein the process is an identified process [Brendel, col. 14, line 41-col. 15, line 16];

a third mode of operation in which the dispatch layer translates the destination address to a process address for the identified process within the plurality of processes; and a fourth mode of operation, responsive to the third mode of operation, in which the packet is sent to the packet routing layer [Brendel, col. 17, lines 9-26].

5. Regarding claim 17, Brendel further discloses a fifth mode which the dispatch layer receives a packet from the identified process for the client and responsive to the fifth mode of operation, in which the dispatch layer translates the source address in the packet of the destination address [Brendel, col. 15, lines 34-56 and col. 16, lines 1-35].

6. Regarding claim 19, Brendel further discloses the packet routing layer is a transmission control protocol layer [Brendel, col. 13, lines 18-46].

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brendel in view of Coile et al. ("Coile"), USPN 6,061,349.

9. Regarding claim 20, Brendel substantially discloses the instant claimed invention but does not specifically disclose the plurality of processes is a plurality of server daemons. However, Coile, in the same field of endeavor, discloses load balancing a plurality of processes that is a plurality of server daemons [Coile, col. 2, lines 12-13 and col. 3, line 52 – col. 4, line 67]. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to incorporate the server daemons, taught by Coile, into load balancing server, taught by Brendel, in order to have virtual servers.

#### ***Allowable Subject Matter***

10. Claims 18 and 39-41 are allowed.

#### ***Response to Arguments***

11. Applicant's arguments filed 8/2/04 have been fully considered but they are not persuasive.

12. (A) Brendel does not disclose a dispatch layer between a TCP layer and an IP layer that has four modes of operation.

As to point (A), Brendel does disclose a modified IP input module and raw socket that has the four modes of operation of the instant independent claims 16 and 38 [Brendel, col. 15, lines 11-56]. During patent examination and prosecution, claims must be given their broadest reasonable interpretation. *In re Van Geuns*, 988 F.2d 1181,

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1184, 26 SPQ2d 1057, 1059 (Fed. Cir. 1993); *In re Prater*, 415 F.2d 1393, 1404, 162 USPQ 541, 550 (CCPA 1969). Giving the instant claims their broadest reasonable interpretation “a dispatch layer between a TCP layer and an IP layer” is broad enough to read on the modified IP input module and raw socket that are between a TCP layer and an IP layer disclosed in Brendel.

13. (B) Coile does not disclose a dispatch layer between a TCP layer and an IP layer that has four modes of operation.

As to point (B), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). It is the combination of Brendel and Coile, not Coile alone, which discloses the instant claimed invention. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to incorporate the server daemons, taught by Coile, into load balancing server, taught by Brendel, in order to have virtual servers.

### ***Conclusion***

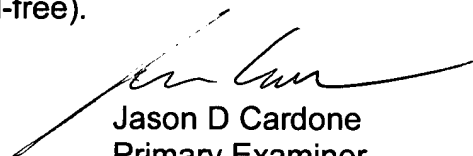
14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action

and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason D Cardone whose telephone number is (571) 272-3933. The examiner can normally be reached on Mon.-Thu. (6AM-3PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey can be reached on (571) 272-3896. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jason D Cardone  
Primary Examiner  
Art Unit 2145

November 23, 2004